

Notice of Allowability

Application No.

09/743,209

Examiner

Kathleen M Kerr

Applicant(s)

BARTON ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/6/04.
2. ☒ The allowed claim(s) is/are 15-18 and 29-32.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


Kathleen M Kerr
Primary Examiner
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DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-final rejection (mailed on July 8, 2004), Applicants filed a response and amendment received on November 6, 2004. Said amendment cancelled Claims 19 and 20, amended Claims 15, 16, and 18, and added new Claims 31-32. Thus, Claims 15-18, 21-22, and 24-32 are pending in the instant Office action.

Election

2. Claims 15-18, 21-22, and 24-32 are pending in the instant application. Claims 21, 22, and 24-28 are withdrawn from further consideration as non-elected inventions. Claims 15-18 and 29-32 will be examined herein.

Priority

3. As previously noted, the instant application is 371 application of International Application No. PCT/GB99/02301 filed on July 15, 1999 and is granted the benefit of priority for the foreign application 9815666.4 filed in the Great Britain on July 17, 1998.

Withdrawn - Claim Objections

4. Previous provisional objection to Claim 18 is withdrawn by virtue of Applicant's amendment.

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Withdrawn - Claim Rejections - 35 U.S.C. § 112

5. Previous rejection of Claims 15-20 and 29-30 under 35 U.S.C. § 112, second paragraph, as being indefinite for being unclear if isolation/purification of the polypeptide is required in step is withdrawn by virtue of Applicant's amendment.

6. Previous rejection of Claims 19-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for the phrase "native to" is withdrawn by virtue of Applicant's cancellation of said claims.

7. Previous rejection of Claims 19-20 under 35 U.S.C. § 112, first paragraph, written description, is withdrawn by virtue of Applicant's cancellation of said claims.

Withdrawn - Claim Rejections - 35 U.S.C. § 102

8. Previous rejection of Claims 15-20 and 29-30 under 35 U.S.C. § 102(b) as being anticipated by Jensen *et al.* (CA 2,108,113, see IDS) is withdrawn by virtue of Applicant's amendment inserting an explicit purification step for the polypeptide which is neither anticipated nor can be rendered obvious by Jensen *et al.* who do not recognize the ORF as disclosed in the instant specification.

EXAMINER'S AMENDMENT

9. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Andrea Lockenour (under customer number 20462) on December 20, 2004.

Claim Amendments

10. Cancel claims 21-22 and 24-28.

Examiner's Comments on Rejoinder

11. The previous restriction requirement mailed June 7, 2002 was set forth under 371 practice (35 U.S.C. § 121 and 372). Since the special technical feature of the allowed method claims is their particular method steps and these steps are not shared with any other of the Groups previously set forth, no examination of rejoinder claims is warranted.

Conclusion

12. Claims 15-18 and 29-32 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (571) 272-0931. The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr
Primary Examiner
Art Unit 1652

December 20, 2004